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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1950th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 24 July 2001, at 3 p.m.

Chairperson: Mr. BHAGWATI

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The meeting was called to order at 3.20 p.m.

GENERAL COMMENTS OF THE COMMITTEE (agenda item 6) (continued)
(CCPR/C/72/Rev.7)

Draft general comment on article 4 of the Covenant (continued)

1. Mr. SCHEININ explained that the drafting which had taken place during the current session of the Committee related only to paragraphs 14-17 of document CCPR/C/72/Rev.7. The English text of those paragraphs had been reissued on 23 July 2001, to take account of stylistic amendments. There were four issues of substance to be decided, the first three in connection with paragraph 16. A proposal had been made to delete the penultimate sentence, now appearing in square brackets, on the basis that it served no real purpose. Secondly, in the English version the presumption of innocence was now affirmed in a separate sentence. Ms. Chanet had proposed adding a statement of the principle of non bis in idem, as one of the fundamental principles of fair trial. The sentence in question would then read: "The presumption of innocence must be respected, as well as the principle of non bis in idem". Mr. Shearer had expressed concern about the reference to article 9 of the Covenant in the last sentence, which called for judicial determination of the lawfulness of every case of detention. He was not himself willing to contemplate an alternative, because it was a core aspect of the general comment and had featured in the Committee's earlier discussion with the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Lastly, the term "State" in paragraph 14 should be replaced by "State party", in line with the language used elsewhere in the draft.

2. The CHAIRPERSON said he took it that the Committee wished to adopt paragraph 14, as revised after second reading on 9 July 2001 and further revised, in the English version only, on 23 July.

3. Paragraph 14, as revised, was adopted.

Paragraph 15

4. Mr. RIVAS POSADA pointed out that in the second sentence of the Spanish version of the paragraph, the term revocación should be replaced by invocación.

5. Mr. KRETZMER said it was not clear that all the rights specified in article 4 (2) of the Covenant were rights for which there were procedural guarantees. The Committee had drawn a distinction between the procedural guarantees which had to be respected in certain cases, and the remedies which must be available in all cases. He suggested amending the first sentence to begin "It is inherent in the protection of some of the rights ...".

6. Mr. SCHEININ proposed deleting the word "those".

7. Mr. KRETZMER supported that proposal.

8. Mr. HENKIN suggested toning down the statement in the first sentence of paragraph 15 by deleting the word "must".

9. Sir Nigel RODLEY said he was reluctant to adopt any approach which would have the effect of detracting from such fundamental rights as the right to life and the right not to be tortured or enslaved. Mr. Kretzmer's proposal was technically accurate, but it might lead to misunderstandings and undermine the substantive force of the statement. He could agree to the deletion of the word "those", although that would not necessarily achieve the same result in the other language versions.

10. Mr. SCHEININ, on a proposal by the CHAIRPERSON, agreed to delete the word "those".

11. Paragraph 15, as revised after second reading and orally amended, was adopted

Paragraph 16

12. Mr. SHEARER expressed misgivings about the final sentence of paragraph 16. On a straightforward view of the Covenant, a Government determined to declare a state of emergency would expect to find in article 4 (2) a definition of the kinds of action it could and could not take. A Government which was aware of the existence of the general comment would also accept that non-derogable rights were protected by procedural guarantees. From that standpoint, however, the present wording of the last sentence of paragraph 16 went too far. It was a well-known fact that in states of emergency, Governments were all too prone to round up their political opponents and jail them. The Committee's concern would then be that such persons should not be executed or tortured. It was regrettable that they could not test their detention in court, but in most cases that was unavoidable. The penultimate sentence in square brackets could perhaps be amended to read: "[Any deviation from the right of access to court during an emergency in all matters must be strictly required by the exigencies of the situation]". That would mean that in an emergency, it was not to be expected that the right of access to a court would automatically be withdrawn. The last sentence would then have to be deleted. Otherwise, the right of access to a court would simply mean hearing a court declare that, under the state of emergency, the detention could not be tested.

13. Mr. SCHEININ pointed out that the principle of non bis in idem was not reflected in the English version, only in the French.

14. Mr. SOLARI YRIGOYEN thought there were also minor discrepancies in the Spanish version.

15. Ms. CHANET said the reference to article 9 was not intended to create a new non-derogable right. The intention had been to give effect to the right to a remedy, in accordance with to article 2 (3) of the Covenant. That was a right which the Committee had decided was inherent in the Covenant as a whole. The first part of the sentence in the French version, "En ce qui concerne l'application de l'article 9 du Pacte pendant un état d'urgence"

could be deleted. The Committee should not contradict its earlier undertaking to the Sub-Commission that it would deal with the article 9 guarantee in the context of its general comment on article 4.

16. Mr. SCHEININ said he could agree to delete the bracketed reference to article 9 in the English version. In an earlier draft, a more explicit connection had been made between the judicial determination of the lawfulness of a detention and the protection of non-derogable rights. The connection was still present in footnote 9. In that sense, the earlier draft, which incorporated references to articles 7 and 16 of the Covenant and their non-derogable provisions, had been more readily understandable.

17. Mr. KRETZMER disagreed with Mr. Shearer's proposal to retain the sentence in square brackets: he would prefer to delete it, and to retain the last sentence instead. There should be no inference that non-derogable rights could be arranged on some kind of scale, so as to allow deviation from some of them. The situations referred to by Mr. Shearer should be subject to judicial review, however inconvenient that might be. In that respect, there was a potential clash with the humanitarian law governing the position of prisoners of war, who were entitled to a review of their detention, but not necessarily review by a court. He suggested deleting the phrase "any form of" in the last sentence of paragraph 16.

18. Mr. KLEIN thought that Mr. Shearer's misgivings could be dispelled if it was specified that the principle of proportionality applied equally to states of emergency. States parties should apply that principle to all their actions during a state of emergency. That had nothing to do with derogation. The reference to article 9 did not mean that it was included among the non-derogable rights.

19. Sir Nigel RODLEY said that, according to article 9, it was not necessary for States to declare a state of emergency in order to resort to administrative forms of detention. That being the case, it was all the more important to ensure that any kind of administrative detention which might be imposed was subject to external control. It would therefore be appropriate to interpret the law governing detention as covering the manner as well as the fact of detention. If the key issue was whether a court was available to determine the lawfulness of an individual case of detention, a compromise solution might be found in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted under General Assembly resolution 43/173 of 9 December 1988. The Principles stated that detained persons must be entitled to take proceedings before a "judicial or other authority" which must afford guarantees of "impartiality and independence". It was evident from the circumstances in which that resolution had been adopted that the Principles were not subject to derogation in any form, and were intended to cover persons under any kind of detention or imprisonment.

20. The CHAIRPERSON suggested deleting the reference to article 9 and to the "lawfulness of any form of detention".

21. Mr. SCHEININ said he could accept those proposals. He thought that Sir Nigel Rodley's proposal could be incorporated in a footnote explaining the scope of lawful derogation from the article 9 requirement of court proceedings. The last sentence of paragraph 16 could then begin with the words "To protect non-derogable rights ...".

22. Ms. CHANET said she was opposed to dispensing with the reference to a court in paragraph 16. It would be a highly retrograde step to depart from the principle of a judicial remedy, long ago accepted by the Committee.

23. The CHAIRPERSON suggested including in a footnote a reference to authorities other than a court.

24. Mr. SHEARER said he would be happy to omit the sentence in square brackets, as proposed by Mr. Kretzmer. As for the principle of proportionality, he felt it was embodied in the language of article 4 (1). If the right to seek judicial review of a case of detention could be linked to the principle of proportionality, his concerns would vanish. However, other members of the Committee apparently wanted to preserve the right of access to a court in all circumstances.

25. Mr. SOLARI YRIGOYEN agreed with Ms. Chanet that it would be a retrograde step to dispense with a judicial remedy in states of emergency. It would also disappoint the expectations of those looking to the general comment for guidance. Many States had suffered the consequences of states of emergency being imposed improperly and without regard for the requirements of article 4.

26. The CHAIRPERSON agreed. He recalled that habeas corpus had been suspended during a state of emergency in India.

27. Mr. LALLAH said that the fair trial requirements and non-derogable rights referred to in the first two sentences of paragraph 16 had a long drafting history. It was important not to retreat from them. He did not favour including language such as "or other authority".

28. Mr. KRETZMER said that while the international community favoured the adoption of rules to curb abuses of states of emergency, it was also important to attend to the needs of countries faced with real emergencies, by devising practicable guidelines. Provided the words "any form of detention" were deleted, in order to avoid the problem of prisoners of war, he would support the draft.

29. Mr. SCHEININ said that the final sentence now read: "In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention must not be diminished by a State party's decision to derogate from the Covenant." Neither in the concluding observations on Israel, nor in the response to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, did the Committee use the word "court". It had referred to "judicial review" in the context of Israel and "habeas corpus" in the response to the Sub-Commission. Nevertheless, he favoured the use of the term "court" because it appeared in article 9 (4), of the Covenant.

30. The CHAIRPERSON said that he would not be in favour of dropping the word "court".

31. Mr. SHEARER said that he would support the emerging consensus.

32. Sir Nigel RODLEY said that it was inappropriate to include the reference to non bis in idem proposed by Ms. Chanet. It was legitimate to refer to the presumption of innocence because it was a framework notion, appearing in article 14 (1). However, any reference to other parts of article 14 should be comprehensive rather than selective.

33. Ms. CHANET said that even the notion of presumption of innocence had been selected from among other aspects of article 14 (1). She had proposed the reference to non bis in idem for a specific reason, namely that during the Second World War in France, when the courts had had insufficient grounds for eliminating political prisoners, they had ordered investigations to be reopened into past crimes in order to find enough evidence to eliminate them. She would raise no objection, however, if a consensus emerged to delete the reference.

34. Mr. SCHEININ supported the proposal to delete the reference to non bis in idem.

35. The CHAIRPERSON confirmed that the penultimate sentence should also be deleted.

36. Paragraph 16, as amended, was adopted.

Paragraph 17

37. Paragraph 17 was adopted.

38. Mr. SCHEININ expressed appreciation for all the contributions made by members of the Committee to the drafting of the general comment. It would be useful at a later date to return to the issue of monitoring procedures for article 4, which might, for instance, include a Special Rapporteur to deal with notifications. The issue could be taken up at the next meeting with States parties to the Covenant.

39. Mr. SCHMIDT (Secretary of the Committee) said that paragraphs 1 to 13 of the draft general comment had been circulated in the three language versions following their adoption at the previous session of the Committee. Paragraphs 14 to 17 would be translated by the Secretariat and circulated in a similar way following the current session.

40. Ms. CHANET offered to check the French translations of paragraphs 14 to 17 as soon as they were available, so that they could be ready before the end of the session.

ADOPTION OF THE ANNUAL REPORT OF THE HUMAN RIGHTS COMMITTEE (agenda item 8) (CCPR/C/72/CRP.1 and Add.1 to 6; CCPR/C/72/CRP.2 and Add.1 to 13)

Executive Summary (CCPR/C/72/CRP.1)

41. Mr. KLEIN (Rapporteur) said that the executive summary was a new feature of the annual report, and needed to be concise, while addressing all the major issues taken up during the period under review.

42. Ms. CHANET asked whether the paragraphs of the executive summary could be numbered.

43. Mr. SCHMIDT (Secretary of the Committee) said that, to his knowledge, it was the first time an executive summary had been included in the annual report of a treaty monitoring body. However, in the equivalent summaries of reports by Special Rapporteurs and Special Representatives to the Commission on Human Rights, paragraphs were not numbered.

First and second paragraphs

44. The first and second paragraphs were adopted.

Third paragraph

45. Mr. KLEIN (Rapporteur) said that the gaps in the third paragraph could only be filled at the end of the session when the number of Views and communications was known.

46. The third paragraph was adopted.

Fourth paragraph

47. Mr. KLEIN (Rapporteur) said that the fourth paragraph should be highlighted because it was encouraging news that the Committee had received its 1,000th individual communication under the Optional Protocol.

48. Mr. LALLAH said that, while he agreed that the first sentence should be highlighted, the following sentence should be deleted, since it was mentioned elsewhere.

49. Mr. KLEIN (Rapporteur) said that he had included the second sentence in order to emphasize the need for the Committee to continue to receive the full support of the United Nations in order to carry out its functions.

50. Mr. LALLAH proposed deleting the second sentence and replacing it with a reference, in brackets, to the relevant section of the report.

51. The fourth paragraph, as amended, was adopted.

Fifth paragraph

52. Mr. SOLARI YRIGOYEN said that it was unwise to refer to a "serious" backlog in the examination of communications, since that was a subjective term. He proposed deleting the word "serious".

53. The fifth paragraph, as amended, was adopted.

Sixth paragraph

54. The CHAIRPERSON suggested that a reference, in brackets, to the relevant section of the report should be included in every paragraph.

55. It was so agreed.

56. Ms. CHANET said that the first sentence did not give a fully accurate description of the role of the Special Rapporteur for Follow-Up on Views. Besides arranging meetings with representatives of States parties which had not responded to requests for information, he also arranged meetings with States parties which had responded, but in a manner found to be unsatisfactory.

57. The sixth paragraph, as amended, was adopted.

Seventh paragraph

58. Mr. KLEIN (Rapporteur) asked whether it was acceptable to refer to the General Comment as "an authoritative guideline" in the second sentence. The last two sentences would probably have to be deleted since General Comment No. 30 would not be adopted owing to lack of time.

59. Mr. LALLAH agreed that the last two sentences should be deleted. He proposed that the second sentence should be deleted too, because it was presumptuous to describe the General Comment as an authoritative guideline.

60. Ms. CHANET agreed that the second sentence was presumptuous, and proposed replacing it with the following: "The General Comment establishes guiding principles for States which declare a state of emergency".

61. The seventh paragraph, as amended, was adopted.

Eighth paragraph

62. The eighth paragraph was adopted.

Ninth paragraph

63. Mr. KLEIN (Rapporteur) said that the ninth paragraph drew attention to the amendments to the rules of procedure that enabled the Committee to examine the human rights situation in States parties that had failed to submit a report or to send representatives to appear before the Committee.

64. Ms. CHANET said that the paragraph should focus on the substantive implications of the new approach instead of referring three times to the amendments to the rules of procedure.

65. Mr. YALDEN, expressing support for Ms. Chanet's suggestion, said that an executive summary should be brief, to the point and use the active rather than the passive voice. He proposed deleting the second sentence and rewording the opening of the third sentence to read: "The Committee has decided that it may examine the human rights situation of States parties".

66. Mr. LALLAH pointed out that the Committee's mandate required it to consider the application of the Covenant in States parties rather than the "human rights situation". The third sentence should be amended accordingly.

67. Mr. KLEIN (Rapporteur) suggested replacing the words "The amendments further introduce" in the last sentence by "The Committee introduced".

68. Mr. SCHMIDT (Secretary of the Committee), noting that the first sentence of the ninth paragraph would remain unchanged, read out the following amended version of the remainder of the paragraph:

> "The Committee has decided that it may examine the application of the Covenant in those States parties that have failed to report to the Committee in spite of repeated reminders and examine the reports of States that fail to appear before the Committee. The Committee has also introduced a procedure for follow-up to concluding observations on State reports."

69. The ninth paragraph, as amended, was adopted.

Tenth paragraph

70. Mr. YALDEN said that the description of the Committee's first official consultative meeting with States parties was unduly wordy and repetitive. For example, the phrase "attended by representatives of numerous States parties to the Covenant" in the second sentence was superfluous. He offered to submit editorial amendments to the Rapporteur.

71. Mr. KLEIN (Rapporteur) said he would be happy to incorporate any amendments that made the text more readable.

72. Mr. SOLARI YRIGOYEN proposed replacing the words "provided a welcome opportunity" in the second sentence by "provided an opportunity". He further proposed deleting the word "mutually" later in the sentence.

73. The tenth paragraph, as amended, was adopted.

Eleventh paragraph

74. The eleventh paragraph was adopted.

75. The executive summary as a whole, as amended, was adopted.

Chapter I. Jurisdiction and activities (CCPR/C/72/CRP.1/Add.1)

A. States parties to the International Covenant on Civil and Political Rights

76. Mr. KLEIN (Rapporteur), referring to the sentences in square brackets in paragraph 7, said that no notification of withdrawal of a reservation had been received since the drafting of chapter I. The second sentence should therefore be deleted and the brackets removed from the third sentence.

77. Mr. RIVAS POSADA said he thought that comments such as "the Committee notes with regret" or "encourages States parties" were inappropriate in a text that should, in principle, confine itself to a review of factual developments.

78. Mr. KLEIN (Rapporteur) said that the second sentence was modelled on previous reports.

79. Sir Nigel RODLEY said that it would be unwise in that case to change the formula since it might be misinterpreted.

80. Section A, as amended, was adopted.

B. Sessions of the Committee

81. Section B was adopted.

C. Elections, membership and attendance of sessions

82. Sir Nigel RODLEY, referring to paragraph 9, said that Lord Colville's full title was Viscount Colville of Culross.

83. Section C, as amended, was adopted.

D. Solemn declaration

84. Mr. KLEIN (Rapporteur) said that re-elected members had for the first time been absolved from the requirement to make a solemn declaration.

85. Section D was adopted.

E. Election of officers

86. Section E was adopted.

F. Special Rapporteurs

87. Ms. CHANET said that, in her capacity as Special Rapporteur for Follow-Up on Views, she had met with representatives of eight States parties. The list in the second sentence should also include Peru, the Netherlands and Austria. Moreover, she had not "laid down" her mandate but completed it.

88. Section F, as amended, was adopted.

G. Amended consolidated guidelines for States parties' reports and amended rules of procedure

89. Section G was adopted.

H. Working groups

90. Mr. SOLARI YRIGOYEN proposed replacing the words "Ad hoc working groups were mandated" in the last sentence of paragraph 17 by "A working group was mandated", in order to bring the text into line with the second sentence of paragraph 24.

91. Mr. KLEIN (Rapporteur) said that the square brackets around the Lawyers' Committee for Human Rights in paragraph 18 should be removed since the organization had made a written submission to the Working Groups.

92. Sir Nigel RODLEY noted that the organizations listed in the second sentence of paragraph 18 included none that could be described as "national". The phrase "in particular national ones" should therefore be deleted in the last sentence.

93. Section H, as amended, was adopted.

I. Commemorative event to mark the twenty-fifth anniversary of the Covenant

94. Ms. CHANET proposed removing the square brackets around "especially in the area of reservations and State succession".

95. Mr. SOLARI YRIGOYEN proposed amending the second sentence to read: "The High Commissioner for Human Rights transmitted a message of congratulations to the Committee".

96. Section I, as amended, was adopted.

J. Related United Nations human rights activities

97. Mr. KLEIN (Rapporteur) said that the words "subject to confirmation" in brackets at the end of paragraph 23 should be deleted.

98. Mr. SOLARI YRIGOYEN requested that paragraph 24 should make it clear that he had participated on behalf of the Committee in two meetings of the Preparatory Committee for the World Conference against Racism, presenting written and oral reports.

99. Section J, as amended, was adopted.

K. Meeting with States parties

100. Ms. CHANET said that the text gave too rosy a picture of the meeting with States parties, which had not been without its problems. In paragraph 25, the phrase "in a mutually beneficial manner" had been translated into French as "dans l'intérêt des Etats parties et du Comité" ("to the benefit of States parties and the Committee"). She considered that the phrase should be amended to read "for the benefit of States parties, the Committee and persons enjoying the rights enshrined in the Covenant".

101. Subparagraph 25 (a) should be amended to read: "current difficulties for States parties and the Committee with the country reporting process ...".

102. Paragraph 26 referred to a request by States parties that they should receive copies of NGO submissions in advance so that they could prepare a response. In fact, the Committee had no intention of allowing States parties access to NGO submissions, both for practical reasons and on grounds of security. She felt that either the reference to the request should be deleted altogether, or the members' response should be recorded.

103. Mr. KLEIN (Rapporteur) suggested the following wording for paragraph 25: "... in a mutually beneficial manner, and also in the interests of persons benefiting under the Covenant ...".

104. Mr. SOLARI YRIGOYEN said that the paragraph went into too much detail, and placed too much emphasis on the positive comments made by States parties. There had been criticisms, too, even though some Committee members had felt that they were politically motivated. Perhaps the paragraph should be shortened to reflect the main point, namely that there had been an exchange of views between the States parties and the Committee.

105. Mr. YALDEN said that it was not an agreed position of the Committee that NGO submissions should never be passed on to States parties, although some members had certainly expressed that view. NGO submissions were hardly secret and were seldom even treated as confidential. The reference to such submissions should perhaps be deleted, so as to give the Committee time to discuss the issue at a later stage and decide on an agreed position.

106. After a discussion in which Mr. AMOR, Mr. LALLAH, Ms. CHANET, Mr. KLEIN, Mr. SOLARI YRIGOYEN, Mr. YALDEN and Sir Nigel RODLEY took part, Mr. KLEIN (Rapporteur) said that the issue of cooperation with NGOs had been an important part of the meeting with States parties and should be reflected in the annual report.

107. He suggested that the first sentence of paragraph 26 should be transposed to the end of paragraph 25. The remainder of the text of paragraph 26 should then be deleted, and the following paragraphs renumbered accordingly.

108. Mr. SOLARI YRIGOYEN noted the reference in existing paragraph 27 to a second meeting with States parties, to be held in 2002. Had the Committee in fact agreed to hold such a meeting? Perhaps it would be safer to say that another meeting would be held "in the near future".

109. Mr. SCHEININ suggested that the year 2002 should be placed in square brackets, which would be removed before the end of the current session, when the Committee formally made the decision to hold the meeting. The Committee had already decided that it would raise the issue of article 4 of the Covenant at the next meeting with States parties.

110. Sir Nigel RODLEY said that the Committee should state definitely the year in which the meeting was to be held, so that the Secretariat could budget for it.

111. Mr. LALLAH said that it was surely unwise to invite States parties to suggest topics for discussion at the next meeting. The Committee should set the agenda.

112. Mr. SCHMIDT (Secretary of the Committee) said that a second meeting with States parties had been provisionally scheduled for October 2002, and a draft decision to that effect would be submitted to the Committee before the end of the current session. At the first meeting, the Committee had invited States parties to suggest topics for discussion in the future.

113. The CHAIRPERSON said that, if there was no objection, he would take it that the Committee wished to transpose the first sentence of paragraph 26 to the end of paragraph 25, and to delete the remainder of the text of paragraph 26. The date for the next meeting with States parties, the year 2002, would be placed in square brackets pending the adoption of a formal decision.

114. It was so decided.

115. Section K, as amended, was adopted.

L. Derogations pursuant to article 4 of the Covenant

116. Mr. KLEIN (Rapporteur) said that paragraph 28 should follow the wording of article 4 (3) of the Covenant, and should thus read: "any derogation must be immediately notified to the other States parties through the intermediary of the Secretary-General".

117. Ms. CHANET suggested that the third sentence of paragraph 29 should be amended to read: "In this respect, reference may be made to the Committee's practice under article 4 of the Covenant and its Optional Protocol".

118. In reply to a point raised by Mr. KRETZMER, the CHAIRPERSON said that the word "authoritative" had been deleted from the last sentence of paragraph 29 and from the relevant paragraph of the executive summary.

119. Mr. KLEIN (Rapporteur) said that the following new paragraph should be inserted after existing paragraph 31: "On 20 February 2001, the Government of the United Kingdom of Great Britain and Northern Ireland informed the Secretary-General that the United Kingdom's derogation from article 9, paragraph 3 of the Covenant, pursuant to a notification dated 23 March 1989, was terminated with effect from 26 February 2001. However, the termination of the derogation only applies to the United Kingdom of Great Britain and Northern Ireland. The derogation remains in effect for the Crown Dependencies, i.e. the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man".

The meeting rose at 6.05 p.m.